

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

The agency identified below in box 1 provides notice of proposed rule change pursuant to *Utah Code* Sections 63-46a-4. Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):	R156-53-501	Time filed:	
Changed to Admin. Code Ref. (R no.):			
1.	Agency: Commerce/Division of Occupational and Professional Licensing		
	Room no.:		
	Building: Heber M. Wells Building		
	Street address 1: 160 East 300 South		
	Street address 2:		
	City, state, zip: Salt Lake City UT 84111-2316		
	Mailing address 1: PO Box 146741		
	Mailing address 2:		
	City, state, zip: Salt Lake City UT 84114-6741		
	Contact person(s):		
	Name:	Phone:	Fax:
	Dan S. Jones	801-530-6720	801-530-6511
(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)			
2.	Title of rule or section (catchline):		
	Administrative Penalties		
3.	Type of notice:		
	New ____; Amendment XX Repeal ____; Repeal and Reenact ____		
4.	Purpose of the rule or reason for the change:		
	The Division and Landscape Architects Board are proposing an amendment to update and add the fine schedule into the rule. The existing fine schedule applicable to licensees and unlicensed persons under Title 58, Chapter 53 is a Division policy.		
5.	This change is a response to comments from the Administrative Rules Review Committee.		
	Yes ____; No XX		
6.	Summary of the rule change:		
	Section 501 regarding administrative penalties for unlawful conduct has been added. The fine amounts being added are being increased over the current fine amounts to be consistent with other fine schedules for occupations and professions the Division regulates.		
7.	Aggregate anticipated cost or savings to:		
	A) State budget:		

	<p>As a result of the fine schedule amounts being increased over the amount currently in Division policy, the state budget may realize a positive fiscal impact. However, it should be noted that the Division has only issued 1-2 fines affecting persons who have violated Title 58, Chapter 53 in the past several years. The Division will incur minimal costs of approximately \$50 to reprint the rule once the proposed amendment is made effective. Any costs incurred will be absorbed in the Division's current budget.</p>																			
	<p>B) Local government:</p> <p>The proposed amendments will not affect local governments; therefore no costs or savings are anticipated. The proposed fine schedule amendment only affects persons who violate the specified sections of Title 58, Chapter 53 as outlined in the fine schedule.</p>																			
	<p>C) Other persons:</p> <p>The proposed fine schedule amendment will affect persons (both licensed and unlicensed) who violate the specified sections of Title 58, Chapter 53 by doubling the amount of the fines from the current amount. The Division is unable to determine how many fines in the future may be issued to persons violating the specified sections of Title 58, Chapter 53. The proposed fine schedule will also have an impact on fines collected through stipulated or written agreements; but it is expected this impact would be minimal.</p>																			
8.	<p>Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization or any character other than an agency):</p> <p>The Division is not able to determine an exact compliance cost to persons affected by the proposed amendment as it would depend on what violation they had committed and if the violation was a first, second or third offense. However, it is estimated that the average increase in cost per citation issued would be double the existing fine amount.</p>																			
9.	<p>Comments by the department head on the fiscal impact the rule may have on businesses:</p> <p>As authorized by statute, this rule amendment adopts a fee schedule for violations of the law. This fine schedule increases the fine amounts previously applied by the Division to violators of the Landscape Architects Licensing Act. Historically, there have been few citations in this profession, so the additional fines are expected to be minimal. No other fiscal impact to businesses is anticipated. Francine A. Giani, Executive Director</p>																			
10.	<p>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</p> <p>Section 58-53-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)</p>																			
11.	<p>This rule adds, updates, or otherwise changes the following titles of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank):</p>																			
12.	<p>The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the <i>Utah State Bulletin</i>. See Section 63-46a-5 and Rule R15-1 for more information.)</p> <table border="1"> <tr> <td colspan="2">A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</td> <td>08/08/2006</td> </tr> <tr> <td colspan="3">B) A public hearing (optional) will be held:</td> </tr> <tr> <td>on (mm/dd/yyyy):</td> <td>at (time):</td> <td>At (place):</td> </tr> <tr> <td>08/07/2006</td> <td>9:00 am</td> <td>160 East 300 South - Conference Room 474 (formerly 4A) - 4th Floor - Salt Lake City, Utah</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </table>		A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):		08/08/2006	B) A public hearing (optional) will be held:			on (mm/dd/yyyy):	at (time):	At (place):	08/07/2006	9:00 am	160 East 300 South - Conference Room 474 (formerly 4A) - 4th Floor - Salt Lake City, Utah						
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13.	<p>This rule change may become effective on (mm/dd/yyyy):</p> <p>08/15/2006</p>																			

	NOTE: The date above is the date on which this rule MAY become effective. It is <i>NOT</i> the effective date. After the date designated in Box 12(A) above, the agency <i>must</i> submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
14.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "NASA") or proper nouns (e.g., "Medicaid")):		
	landscape architects	licensing	
15.	Attach an RTF document containing the text of this rule change (filename):		R156-53.pro
To the agency: Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
AGENCY AUTHORIZATION			
Agency head or designee, and title:		J. Craig Jackson, Director	Date (mm/dd/yyyy): 06/05/2006

ProposedRule.doc 9/26/2003

R156. Commerce, Occupational and Professional Licensing.

R156-53. Landscape Architects Licensing Act Rules.

R156-53-501. Administrative Penalties - Unlawful Conduct.

In accordance with Sections 58-1-501 and 58-53-501 and Subsection 58-1-501(1)(a) through (d), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: \$800

Second Offense: \$1,600

(2) Engaging in, or representing oneself as engaged in the practice of landscape architecture as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: \$800

Second Offense: \$1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: \$1,000

Second Offense: \$2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: \$1,000

Second Offense: \$2,000

(5) Knowingly permitting any person to use his license except as permitted by law.

First Offense: \$1,000

Second Offense: \$2,000

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount with a maximum amount not to exceed the maximum fine allowed under Subsection 58-53-502(1)(i)(iii).

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

KEY: landscape architects, licensing

Date of Enactment or Last Substantive Amendment: [~~July 7, 1998~~]2006

Notice of Continuation: June 2, 2003

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-53-101